

Amendment No. 1 to SB3364

Person, Curtis
Signature of Sponsor

AMEND Senate Bill No. 3364

House Bill No. 3403*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 39-14-150, is amended by deleting the section in its entirety and substituting instead the following:

Section 39-14-150. (a) A person commits the offense of identity theft who knowingly obtains, possesses, buys, or uses, the personal identifying information of another:

(1) With the intent to commit any unlawful act, including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of such other person; and

(2)

(A) Without the consent of such other person; or

(B) Without the lawful authority to obtain, possess, buy or use such identifying information.

(3) For purposes of the offense of identity theft, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, C.P.L. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C.1681 et seq.) shall not be considered an "unlawful act".

(b)

(1) A person commits the offense of identity theft trafficking who knowingly sells, transfers, gives, trades, loans or delivers, or possesses with the intent to sell, transfer, give, trade, loan or deliver, the personal identifying information of another:

(A) With the intent that such information be used by someone else to commit any unlawful act, including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of such other person; or

(B) Under circumstances such that the person should have known that the identifying information would be used by someone else to commit any unlawful act, including, but not limited to, obtaining or attempting to obtain credit, goods, services or medical information in the name of such other person; and

(C) The person does not have the consent of the person who is identified by the information to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, trade, loan or deliver, such information; and

(D) The person does not have lawful authority to sell, transfer, give, trade, loan or deliver, or possess with the intent to sell, transfer, give, loan or deliver, the personal identifying information.

(2) For purposes of the offense of identity theft trafficking, an activity involving a possession, use or transfer that is permitted by the Tennessee Financial Records Privacy Act, codified in title 45, chapter 10; Title V of the Gramm-Leach-Bliley Act, C.P.L. 106-102; or the Fair Credit Reporting Act, as amended by the Fair and Accurate Credit Transactional Act, (15 U.S.C.1681 et seq.) shall not be considered an "unlawful act".

(c) In a prosecution under subsection (b), the trier of fact may infer from the defendant's simultaneous possession of the personal identifying information of five (5) or more different individuals that such defendant possessed the personal identifying information with the intent to sell, transfer, give, trade, loan or deliver such information. However, if the defendant had the consent of one (1) or more of such individuals to possess the personal identifying information of that individual, any such consenting

individual shall not be counted in determining whether an inference of possession for sale may be drawn by the trier of fact.

(d) As used in this section, "personal identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(1) Name, address, telephone number, health insurance identification number, school identification number, social security number, date of birth, official state or government issued driver license or identification number, alien registration number, passport number, employer or taxpayer identification number, place of employment, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, credit or debit card number, or information contained in a birth or death certificate;

(2) Unique biometric data, such as fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, routing code, or other personal identifying data which enables an individual to obtain merchandise or service or to otherwise financially encumber the legitimate possessor of the identifying data; or

(4) Telecommunication identifying information or access device.

(e)

(1) The general assembly recognizes that an offense under this section may result in more than one (1) victim. While a company or business that loses money, merchandise, or other thing of value as a result of such offense is a victim, it is equally true that the person whose identity is stolen is also a victim. The person whose identity is stolen suffers definite and measurable losses including expenses necessary to cancel, stop payment on, or replace stolen items such as credit cards, checks, driver licenses, and other documents, costs

incurred in discovering the extent of the identity theft, in repairing damage from such theft such as credit ratings and reports and preventing further damages from the theft, long distance telephone charges to law enforcement officials, government offices, and businesses in regard to the theft, and lost wages from the time away from work required to obtain new personal identifying information and complete all of the tasks set out above. In addition to measurable losses, the person whose identity is stolen also suffers immeasurable damages such as stress and anxiety as well as possible health problems resulting from or aggravated by the offense.

(2) For the reasons set out in subdivision (1), the general assembly declares that any person whose identity is unlawfully obtained in violation of subsection (a) or (b) of this section is a victim of crime within the meaning of Article I, § 35 of the Constitution of Tennessee and title 40, chapter 38.

(f)

(1) Notwithstanding any other provision of law to the contrary, a person who is the alleged victim of identity theft may, in accordance with the provisions of this subsection, sign a written authorization statement waiving any privacy provisions and consenting to the disclosure of any records maintained by a public or private entity in the same name as such person. Any records released pursuant to this subsection shall only be released to the law enforcement agency with jurisdiction over the alleged offense.

(2) The alleged victim of identity theft shall sign and date a record release authorization statement that contains the following:

- (A) The name of the law enforcement agency to which disclosure is authorized;
- (B) The type of records which are authorized to be disclosed; and
- (C) The period of time during which the authorization is valid.

An authorization statement executed pursuant to this subsection shall only remain valid for a period of one (1) year. More than one (1) type of record and records maintained by different entities may be included in a single authorization statement.

(3) Upon receiving an authorization statement, the law enforcement agency shall require the person to produce such person's social security number, a picture identification and such other indicia of identity as is necessary to ensure that the person completing the authorization statement is the same person as the person whose name appears on the statement seeking a release of records. If the person does not have a social security number or a picture identification, the agency may substitute other indicia of identity.

(4) If the investigating law enforcement officer believes that the release of such records would aid in the investigation and prosecution of the identity theft, such officer shall complete an affidavit stating that the named alleged victim of identity theft seeks to have certain records released and listing the indicia of identity used by the officer to verify that the person completing the authorization statement is the same person whose name appears on the statement seeking release of such person's records. The law enforcement agency shall keep a copy of the authorization statement and the affidavit in such person's case file.

(5) The officer shall take the original authorization statement and affidavit to the public or private entity maintaining the records the person seeks to release. Upon presenting these two (2) documents, the entity maintaining the records shall search to see if it currently maintains any records in such person's name. If so, the public or private entity shall check the indicia of identity contained in such maintained records to see if it matches the indicia of identity contained in the affidavit. The entity shall have no more than ten (10) business days from receipt of the authorization statement to conduct the records search,

determine if the indicia of identity match, and respond to the law enforcement officer and person seeking release of the records.

(6) If the public or private entity does currently maintain records in such person's name and if the indicia of identity contained in such records does match the indicia of identity contained in the affidavit, the public or private entity shall keep the authorization statement and affidavit in such person's file and is then authorized to release such records to the law enforcement agency, as represented by the officer presenting the statement and affidavit.

(7) If identifying information about the person is contained in records released pursuant to this section and such records are later used in a criminal trial, at the conclusion of such trial, the judge shall seal such records to prevent further dissemination of the identifying information.

(8) Notwithstanding any other provision of law to the contrary, the public or private entity shall have no duty or obligation to notify the person who originally caused such records to be created and maintained that an authorization statement and affidavit has been filed seeking the release of such records or that such records were released in accordance with this subsection.

(9) No public or private entity shall be criminally or civilly liable for the release of records to a law enforcement agency if such release is accomplished in accordance with this subsection.

(10) Nothing in this subsection shall be construed to prohibit the release of records held by a public or private entity under any other applicable provision of law.

(11) Notwithstanding the provisions of this subsection to the contrary, the department of safety shall not be required to furnish records pursuant to this subsection until January 1, 2006, or until the new computer system in the titling and registration division of such department is in place and operational, whichever date occurs first.

(g)

(1) Notwithstanding any other provision of law to the contrary, if a private entity or business maintains a record that contains any of the personal identifying information set out in subdivision (2) of this subsection concerning one of its customers, and the entity, by law, practice or policy discards such records after a specified period of time, any such record containing such personal identifying information shall not be discarded unless the business:

(A) Shreds or burns the customer's record before discarding the record;

(B) Erases the personal identifying information contained in the customer's record before discarding the record;

(C) Modifies the customer's record to make the personal identifying information unreadable before discarding the record; or

(D) Takes action to destroy the customer's personal identifying information in a manner that it reasonably believes will ensure that no unauthorized persons have access to the personal identifying information contained in the customer's record for the period of time between the record's disposal and the record's destruction.

(2) As used in this subsection, "personal identifying information" means a customer's:

(A) Social security number;

(B) Driver license identification number;

(C) Savings account number;

(D) Checking account number;

(E) PIN (personal identification number) or password;

(F) Complete credit or debit card number;

(G) Demand deposit account number;

(H) Health insurance identification number; or

(l) Unique biometric data.

(3)

(A) A violation of this subsection shall be considered a violation of the Tennessee Consumer Protection Act of 1977, codified in title 47, chapter 18, and may be punishable by a civil penalty in the amount of five hundred dollars (\$500) for each record containing a customer's personal identifying information that is wrongfully disposed of or discarded. However, no such total penalty may exceed ten thousand dollars (\$10,000) for any one (1) customer.

(B) It is an affirmative defense to any civil penalty imposed pursuant to this subsection that the business used due diligence in its attempt to properly dispose of or discard such records.

(4) The methods of destroying the personal identifying information of a customer set out in this subsection shall be considered the minimum standards. If a private entity or business by law, practice or policy currently is required to have or otherwise has in place more stringent methods and procedures for destroying the personal identifying information in a customer's record than is required by this subsection, such private entity or business may continue to destroy the identifying information in the more stringent manner.

(5) To the extent that the provisions of this subsection conflict with applicable federal law, such subsection shall not apply to an entity that is subject to the enforcement authority of the federal banking agencies, the national credit union administration, the federal trade commission or the securities and exchange commission. For any such entity, the provisions of applicable federal law shall govern the proper disposition of records containing consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose.

(6) Notwithstanding subdivision (5) of this subsection, the provisions of this subsection shall not apply to any financial institution that is subject to the privacy and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et. seq., as amended, and as it existed on January 31, 2002;

(h)

(1) The following property shall be subject to seizure and judicial forfeiture to the state in the manner provided:

(A) Any property, real or personal, directly or indirectly acquired by or received in violation of this section;

(B) Any property, real or personal, received as an inducement to violate this section;

(C) Any property, real or personal, traceable to the proceeds from such violation;

(D) Any property, real or personal, used in connection with or to facilitate a violation of this section; and

(E) All conveyances, including aircraft, vehicles or vessels, which are used, or are intended for use, in the commission of or escape from a violation of this section and any money, merchandise or other property contained in such conveyance.

(2) Property seized pursuant to this subdivision shall be seized and forfeited pursuant to the procedure set out in title 39, chapter 11, part 7.

(3) Notwithstanding the provisions of §§ 39-11-713, property seized pursuant to this subsection shall be disposed of as follows:

(A) All property ordered forfeited shall be sold at public auction. The proceeds from all property forfeited and sold at public auction shall be disposed of by the court as directed by this section. The attorney general shall first be compensated for all expenses incident to the litigation, as approved by the court. Any such costs for appeals shall be provided for by the trial court upon

conclusion of the litigation. The attorney general shall then direct that any public agency be reimbursed for out-of-pocket expenses resulting from the investigation, seizure and storage of the forfeited property.

(B) Out of the proceeds remaining, the court shall order restitution be made to the person or persons whose identity was stolen for any identifiable losses resulting from the offense.

(C) The court shall then award the remainder of the funds as follows:

(i) In the event that the investigating and seizing agency was the identity theft task force, twenty-five percent (25%) of the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account to be used jointly by the commissioner of safety and the executive director of the district attorneys general conference to further the goals and operation of the identity theft task force;

(ii) In the event that the investigating and seizing agency was a state agency, twenty-five percent (25%) of the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account for the agency to be used in its identity theft operations;

(iii) In the event that the investigating and seizing agency is the Tennessee bureau of investigation then, twenty-five percent (25%) of the funds shall be distributed to the state treasurer who shall deposit the funds in a designated account for the agency to be used in its identity theft operations;

(iv) In the event that the investigating and seizing agency is a local public agency then twenty-five percent (25%) of the funds shall be distributed to its local government for distribution to the law enforcement agency for use in the enforcement of this section When more than one (1) local public agency participated in the investigation and seizure of forfeited property as certified by the attorney general, then the court shall

order a distribution of the twenty-five percent (25%) of the funds according to the participation of each local public agency. Accounting procedures for the financial administration of such funds shall be in keeping with those prescribed by the comptroller of the treasury; and

(v) The remainder of such funds shall be distributed to the state treasurer who shall deposit the funds in a designated account to defray the state costs associated with the identity theft task force.

(4) For purposes of this subsection a local public agency includes any county or municipal law enforcement agency or commission, the district attorney general, or any local department or agency of local government authorized by the attorney general to participate in the investigation.

(5) Funds awarded under this section may not be used to supplement salaries of any public employee or law enforcement officer. Funds awarded under this section may not supplant other local or state funds.

(i)

(1) Identity theft as prohibited by subsection (a) is a Class D felony.

(2) Identity theft trafficking as prohibited by subsection (b) is a Class C felony.

SECTION 2. Tennessee Code Annotated, Section 39-14-115, is amended by adding the following language as subsection (c) and by redesignating the existing subsection (c) as subsection (d):

(c) A person who owns, manufactures, distributes, buys, transfers, sells, or possesses a tool, apparatus, instrument, machine, implement or other device with the intent to use, permit its use or under circumstances in which such person knows it may be used to commit the offense of identity theft as defined in § 39-14-150 also violates this section.

SECTION 3.

(a) From funds appropriated in the general appropriations act and from the proceeds of property seized and forfeited pursuant to § 39-14-150(h), there is created an identity theft task force whose purpose shall be to specialize in the detection, identification, investigation and prosecution of the offense of identity theft.

(b) The task force shall consist of:

(1) Three (3) new assistant district attorneys general positions that shall be administratively attached to the office of the executive director of the district attorneys general conference;

(2) Two (2) new criminal investigator positions that shall be administratively attached to the office of the commissioner of the department of safety;

(3) The one (1) existing criminal investigator in the department of safety who shall be transferred to the office of the commissioner of such department for assignment to the task force.

(4) Such administrative and clerical personnel as are necessary to adequately staff the task force.

(5) An assistant district attorney, a criminal investigator and necessary clerical staff shall be located in each grand division of the state. If space is available, they shall be located in office space currently utilized by a district attorney general or the department of safety in each grand division.

(c)

(1) The executive director of the district attorneys general conference shall employ the three (3) assistant district attorneys general on the task force. The task force assistant district attorneys general shall be compensated at the same level as an assistant district attorney general with comparable experience.

(2) The executive director shall assign one (1) assistant district attorney general and the necessary clerical staff to each grand division of the state and shall designate one of the assistants as the task force supervising attorney.

(3) Utilizing the procedure set out in subsection (e), the assistant district attorneys general on the task force shall have the authority to investigate and prosecute offenses in every county and judicial district in the state, regardless of the grand division to which they have been assigned.

(d)

(1) The commissioner of the department of safety shall employ the two (2) new criminal investigators on the task force.

(2) The commissioner shall assign one (1) criminal investigator to each grand division of the state and shall designate one of the investigators as the task force supervising investigators.

(e) The prosecution of identity theft cases shall be under the direction of the district attorney general for the judicial district in which the offense occurred and the assistant district attorney assigned to the identity theft task force shall assist the local district attorney general in the prosecution of such offense.

(f) By July 1, 2005, and every July 1 thereafter, the task force shall file a report with the Senate Commerce, Labor and Agriculture Committee and the House of Representatives Commerce Committee detailing the activities of the task force during the previous year. Such report shall include, but not be limited to, the number of cases investigated during that year, the number of investigations resulting in prosecution or seizure and forfeiture, the number of case prosecuted, the disposition of each case investigated, the number of convictions and the sentence for each conviction, the number of victims involved in each case, the total value of goods and service lost by victims as the result of identity theft, the amount of money recovered from each case, if any, through fines, forfeitures or restitution and the number of cases that remain pending at the end of the year

SECTION 4. For purposes of establishing the identity theft task force pursuant to SECTION 3, this act shall take effect upon becoming a law. For all other purposes, this act shall take effect July 1, 2004, the public welfare requiring it.

